

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KELLY CONARD,

Plaintiff

v.

**PENNSYLVANIA STATE POLICE,
et al.,**

Defendants

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Civ. No. 4:06-cv-1450

Magistrate Judge Carlson

Judge Rambo

MEMORANDUM

Before the court is a report and recommendation filed by the magistrate judge in which he recommends that Plaintiff Kelly Conard's motion to reopen her case (Doc. 73), filed pursuant to Federal Rule of Civil Procedure 60, be denied. (Doc. 75). Conard has filed objections to the report and recommendation. (Doc. 77.) No response to the objections has been filed. For the reasons set forth below, the report and recommendation will be adopted and the motion to reopen will be denied.

I. Background

This case was an action brought by Conard against the Pennsylvania State Police, Conard's former employer. The case was assigned to Judge Malcolm Muir of the Williamsport division of the Middle District of Pennsylvania. On September 28, 2007, Judge Muir recused himself from the case. The recusal was based on the fact that plaintiff's ex-husband, Joe Piccola, was a court security

officer assigned to the Williamsport federal court building. Judge Muir considered Mr. Piccola to be a friend. He therefore entered an order of recusal. (Doc. 57.) The case was then assigned to Judge Thomas Vanaskie of the Scranton division.¹

Conard was initially represented by Wayne A. Ely. His representation terminated on March 14, 2007. On March 27, 2007, a Notice of Appearance was filed by Donald A. Bailey. On August 10, 2007, Douglas R. Goldhaber entered an appearance on behalf of Conard. While Goldhaber still appears on the docket sheet, all documents submitted in this case post March 27, 2007 were submitted on behalf of Conard by Bailey.

On January 15, 2009, Judge Vanaskie dismissed the claims against the Pennsylvania State Police (Doc. 66) after Plaintiff's counsel conceded that the claims against the Pennsylvania State Police could not be substantiated. On February 25, 2009, Judge Vanaskie dismissed the claims against Pennsylvania State Troopers Dennis Hile and Joseph Tripp. (Doc. 68.)

A notice of appeal of these judgments was filed on March 23, 2009. (Doc. 70.) On March 24, 2010, the judgments of the district court were affirmed by the Court of Appeals. (Doc. 72.)

In October 2013, Attorney Bailey was disciplined and suspended from practice by the Supreme Court of Pennsylvania.

¹ Judge Vanaskie was later appointed to the Court of Appeals for the Third Circuit.

II. Discussion

In her objections to the report and recommendation, Conard asserts as follows:

[I]t appears that there is an abundance of evidence which has been revealed that has shown that Judges of this Court had a long-term bias and prejudice against Mr. Bailey which clearly overlapped with the handling of my case, and has given me very reasonable cause to believe that I have been adversely affected and had my case improperly dismissed as part of a pattern of conduct to hurt and harm Mr. Bailey and the civil rights clients that he represents.

(Doc. 77, pp. 4-5.)

The magistrate judge found that the motion to reopen was untimely. (Doc. 75, p. 4.) In her objection to the report and recommendation, Conard refers to an attached statement which she claims warrants a reopening of this case. (Doc. 77, pp. 6-7.) However, no statement was attached to this motion. Furthermore, Conard does not refer to any specific documents and the date of discovery of any documents to which this court could consider would amount to after discovered evidence.

The magistrate judge also found that the motion failed on the merits. The magistrate judge cited many cases in this district which rebuffed the argument by other plaintiffs that Mr. Bailey's disciplinary proceedings adversely impacted their cases. (Doc. 75, pp. 6-7.)

For the reasons set forth in the report and recommendation, the motion to reopen the case (Doc. 73) will be denied. An appropriate order will issue.

s/Sylvia H. Rambo

SYLVIA H. RAMBO

United States District Judge

Dated: January 25, 2016